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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/31/2004

Andy Schwammburger

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EXAMINER

ARAJ, MICHAEL J

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,926	<b>Applicant(s)</b> SCHWAMMBERGER ET AL.	
	<b>Examiner</b> MICHAEL J. ARAJ	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 35-38, 40-42, 44-50, 52-54, 56-62 and 67-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-38, 40-42, 44-50, 52-54, 56-62 and 67-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 24, 2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 35-38, 40-42, 44-50, 52-54, 56-62 and 67-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 35, 54, 60 and 69 recite the limitation "the treatment" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recite the limitation "the outrigger element" in lines 5 and 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the flexible connection element" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the connection element" in lines 13 and 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the other one" in lines 18 and 19. There is insufficient antecedent basis for this limitation in the claim.

Claims 36, 37, 38 and 53 recites the limitation "the connection element" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 40, 42, 44, 46-50, 52 and 53 recite the limitation "the outrigger" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 54 recites the limitation "the outrigger element" in lines 5, 9, 15 and 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 54 recites the limitation "the flexible connection element" in lines 9 and 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 54 recites the limitation "the periphery" in lines 10-11. There is insufficient antecedent basis for this limitation in the claim.

Claim 54 recites the limitation "the connection element" in lines 13 and 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 54 recites the limitation "the other one" in lines 18 and 19. There is insufficient antecedent basis for this limitation in the claim.

Claims 56-59 recite the limitation "the outrigger" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites the limitation "the outrigger element" in lines 5, 9 and 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites the limitation "the flexible connection element" in lines 9 and 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 60 recites the limitation "the other one" in lines 18 and 19. There is insufficient antecedent basis for this limitation in the claim.

Claims 61, 68, 70 and 71 recite the limitation "the outrigger" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 68 recites the limitation "the flexible connection element" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the integral outrigger element" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the flexible connection" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the outrigger element" in line 9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 69-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Dall et al (US Patent 5,665,089).

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Dall et al disclose (**Figure 8**) a system comprising: a main plate (**81**) with passages (**48**) extending parallel to the plane defined by the main plate; prefabricated elongate flexible connection elements/wire/thread (**64**) pass through the passages (**48**); each connection element is different with respect to shape, size or length (impossible to have perfectly uniform thickness, plus the length will be cut according to different orientations and encircling different anatomies); a flexible (relative term) outrigger (**82**) perforated with a plurality of holes/ring sections adapted to receive at least five (**Column 5, Lines 1-2**) bone screws (**80**); the holes are in a grid-like shape; the outrigger (**82**) has a base area smaller (the thickness along the bone is shorter) than that of the main plate; the device is intended to have the free ends of U-shaped (when bent around) wires (**64**) fixed remote (**See Figure 8**) from the outrigger (**82**) and is inherently capable of being twisted or tied instead of crimped; the outrigger and main plate are offset from one another and can have the distance between them controlled by the connection elements (**64**); the main plate has a hook-like element (the base portion is concave and thus both side edges can be “hooks”); and the outrigger and connection elements when fixed together are un-releasably connected.

In regard to the newly added limitations of: U-shape flexible connection element having a pair of U limbs extending outwardly from a U base of the outrigger element to be received within a pair of passages within the main plate, it is noted that the flexible element (**64**) meets the claim when being fed in such a way to have two free ends extending from the outrigger (**82**), with each free end received within one of the pair of passages (**48**) within the main plate (**81**).

***Allowable Subject Matter***

Claims 35-38, 40-42, 44-50, 52-54, 56-62 and 67-68 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed on July 24, 2009 have been fully considered but they are not fully persuasive. In regard to claims 69-71 now being rejected under 35 U.S.C. 102(b) as being anticipated by Dall et al, the usage of "integral" in the broadest reasonable interpretation can include necessary components. Therefore the outrigger element is a "necessary" component which includes a flexible connection element having a pair of arms.

The remaining claims appear allowable once the 112 rejection issues are clarified.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775